

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CRIMINAL NO. 07-103

VERSUS

SECTION "L" MAG. (5)

JAMES G. PERDIGAO

VIOLATION: 18 USC 1341,
1344, 2314, 1957 & 2, 26
USC 7201 & 7206 (1)

**MOTION TO COMPEL DISCLOSURE OF
DEFENDANT'S STATEMENTS PURSUANT TO RULE 16(A)**

NOW INTO COURT, through undersigned counsel, comes defendant James Perdigao who hereby moves the court to compel disclosure and production for inspection and copying any and all oral, written or recorded statements or transcripts of any nature or description, made by or attributed to the defendant, which are in the possession, custody or control of the United States of America, and the existence of which is known or by the exercise of due diligence may become known to it, all as required by Fed.R.Crim.P. 16(a). Defendant further reserves the right to file additional motions including motions to suppress once the government has met its disclosure obligations regarding these matters.

**WESSEL & ASSOCIATES
A LAW CORPORATION**

/s/ William F. Wessel
WILLIAM F. WESSEL (#8551)
127 Camp St.
New Orleans, LA 70130
Telephone (504) 568-1112
Facsimile (504) 568-1208

and

/s/ Charles F. Griffin
CHARLES GRIFFIN, ESQ.
(#06318)
802 S. Carrollton Avenue
New Orleans, Louisiana 70118
Telephone (504) 866-4046
Facsimile (504) 866-5633

**ATTORNEYS FOR
DEFENDANT
JAMES PERDIGAO**

CERTIFICATE OF SERVICE

I hereby certify that on **September 26, 2008** I electronically filed the above and foregoing pleading with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to counsel registered with the court for receipt of pleadings by e-mail. I also certify that the foregoing and all attachments thereto have been served on all counsel of record by facsimile, electronic mail and/or by depositing same in the United States Mail, properly addressed and postage prepaid, this 26th day of September, 2008.

/s/ William F. Wessel
WILLIAM F. WESSEL (8551)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CRIMINAL NO. 07-103

VERSUS

SECTION "L" MAG. (5)

JAMES G. PERDIGAO

VIOLATION: 18 USC 1341,
1344, 2314, 1957 & 2, 26
USC 7201 & 7206 (1)

**MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL DISCLOSURE OF
DEFENDANT'S STATEMENTS PURSUANT TO RULE 16(A)**

This memorandum is respectfully submitted by defendant James Perdigao, through undersigned counsel, in support of his motion to compel disclosure and production for inspection and copying any and all oral, written or recorded statements or transcripts of any nature or description, made by or attributed to the defendant, which are in the possession, custody or control of the United States of America, and the existence of which is known or by the exercise of due diligence may become known to it, all as required by Fed.R.Crim.P. 16(a).

Background

In its initial disclosures, the government failed to produce the defendant's statements as required by Fed.R.Crim.P. 16(a). By letter dated July 30, 2007, counsel for defendant advised the prosecutor that the initial disclosures contained no production of the defendant's statements and formally requested disclosure pursuant to Fed.R.Crim.P.

16(a)(1)(A) and (B) of any and all oral, written or recorded statements made by the defendant to the government. See Exhibit A attached hereto and incorporated herein by reference.

By letter dated July 31, 2007, the government furnished a total of eleven FBI summaries of statements made by the defendant, with the dates of those statements identified in the cover letter. See Exhibit B attached hereto and incorporated herein by reference.

By letter dated May 1, 2008, counsel for defendant acknowledged the receipt of the previously furnished eleven summaries of statements, but noted that there were a total of another eleven de-briefing dates of the defendant for which no summaries, notes or transcriptions of defendant's statements were provided. In other words, the government failed to provide FBI summaries for half of the 22 total meetings with the government. See Exhibit C attached hereto and incorporated herein by reference.

By letter dated May 9, 2008, the government responded to defense counsel's May 1, 2008, but to date, the defendant has not received any further summaries, notes or transcriptions of any kind for the dates identified. See Exhibit D attached hereto and incorporated herein by reference.

Law and Argument

Rule 16(a) of the Federal Rules of Criminal Procedure provides that the government's disclosure shall include the following:

(1) *Information Subject to Disclosure.*

(A) *Defendant's Oral Statement.*

Upon a defendant's request, the government must disclose to the defendant the substance of any relevant oral statement made by the defendant, before or after arrest, in response to interrogation by a person the defendant knew was a government agent if the government intends to use the statement at trial.

(B) Defendant's Written or Recorded Statement.

Upon a defendant's request, the government must disclose to the defendant, and make available for inspection, copying, or photographing, all of the following:

- (i) any relevant written or recorded statement by the defendant if:
 - the statement is within the government's possession, custody, or control; and
 - the attorney for the government knows -- or through due diligence could know -- that the statement exists;
- (ii) the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew was a government agent; and
- (iii) the defendant's recorded testimony before a grand jury relating to the charged offense.

Based on the express language of Rule 16(a) of the Federal Rules of Criminal Procedure, defendant requests that the government be required to produce the following:

- 1) Discovery and disclosure of all written or recorded statements made by the defendant, portions of written records containing the substance of any oral statements made by the defendant, the substance of all oral statements made by the defendant in response to interrogation by any person then known by the defendant to be a government agent, recorded testimony of the defendant before a grand jury, and recorded statements of co-conspirators (if any), all as delineated herein, regardless of whether the statements were obtained in connection with a separate investigation, so

long as they are relevant to the pending case. Fed. R. Crim. P. 16(a)(1)(A); United States v. Lanoue, 71 F.3d 966, 974 (1st Cir. 1995).

- 2) Discovery of all relevant written or recorded statements made by the defendant, whether or not made to a person then known by the defendant to be a government agent.
- 3) Discovery of all relevant written or recorded statements made by the defendant, whether or not the statement was made before, during or after arrest, hence, specifically including but not limited to any such statement made during the pendency of the alleged charged conduct. United States v. Noe, 821 F.2d 604, 606-09 (11th Cir. 1987); United States v. Ible, 630 F.2d 389 (5th Cir. 1980); United States v. Crisona, 416 F.2d 107, 114-15 (2d Cir. 1969), cert. denied, 397 U.S. 961 (1970); United States v. Villa, 370 F. Supp. 515, 517-20 (D. Conn. 1974).
- 4) Discovery of all relevant written or recorded statements made by the defendant at any time, specifically including but not limited to any such statements recorded by means of electronic surveillance. United States v. Lanoue, 71 F.3d 966, 973-74 (1st Cir. 1995); United States v. Ible, 630 F.2d 389 (5th Cir. 1980); United States v. Crisona, 416 F.2d 107, 114-15 (2d Cir. 1969), cert. denied, 397 U.S. 961 (1970).
- 5) Discovery of all relevant written or recorded statements made by the defendant, whether the government intends to offer, introduce or use them in evidence at the trial or not. United States v. Lanoue, 71 F.3d 966, 975,

978 (1st Cir. 1995).

- 6) Discovery of that portion of all written records containing the substance of any oral statement made by the defendant in response to interrogation by any person then arguably known to the defendant to be a government agent, whether or not the statement was made before, during or after arrest.
- 7) Discovery of that portion of all written records containing the substance of any oral statement made by the defendant in response to interrogation by any person then arguably known to the defendant to be a government agent, whether the government intends to offer, introduce or use them in evidence at trial or not.
- 8) Discovery of that portion of all written records which contain references to a relevant oral statement made by the defendant in response to interrogation by any person then arguably known to the defendant to be a government agent, whether or not the reference encapsulates the statement. Advisory Committee Note to 1991 Amendment of Subdivision 16(a)(1)(A) (second paragraph of Note) ("The written record need not be a transcription or summary of the defendant's statement but must only be some written reference which would provide some means for the prosecution and defense to identify the statement.").
- 9) Discovery and disclosure of the substance of all oral statements made by the defendant in response to any person then arguably known by the

defendant to be a government agent, whether or not the statement was made before, during or after arrest.

- 10) Discovery and disclosure of the substance of all oral statements made by the defendant in response to interrogation by any person then arguably known by the defendant to be a government agent, if the Government intends to "use" that statement in any way at trial, such as during its case-in-chief, during cross-examination, in rebuttal, for impeachment, or otherwise.
- 11) Discovery and disclosure of all the oral, written and recorded statements listed herein even though a witness to or recorder of the statement may have been a prosecutor. E.g., United States v. Hasiwar, 299 F. Supp. 1053, 1055 (S.D.N.Y. 1969); United States v. Scharf, 267 F. Supp. 19, 19-20 (S.D.N.Y. 1967); see also, Goldberg v. United States 425 U.S. 94, 98, 101-08 (1976) (holding that, under the Jencks Act, the work product doctrine does not prohibit the production of handwritten notes prepared by prosecutors during interviews of a prospective witness). Thus, naturally, no attorney-work-product privilege applies to notes of meetings attended by an adverse party (like the defendant) or of telephone conversations with the defendant.
- 12) Discovery of all relevant written or recorded statements made by the defendant to third persons, specifically including but not limited to written correspondence, sent to third persons, that come into the possession,

custody or control of the government, United States v. Matthews, 20 F.3d 538, 549-50 (2d Cir. 1994), and tape recordings, made by third persons, that come into the possession, custody, or control of the government. United States v. Bailleaux, 685 F.2d 1105, 1113 (9th Cir. 1982).

- 13) Discovery and disclosure of any relevant written or oral statements and the substance of any oral statements made by the defendant to third parties, even if they are not government agents, whether or not the third parties are prospective government witnesses. United States v. Thevis, 84 F.R.D. 47, 55-56 (N.D. Ga. 1979).
- 14) In the lesser alternative, discovery and disclosure of any relevant written or oral statements and the substance of any oral statements made by the defendant to third parties, even if they are not government agents, if the third parties are not government witnesses. United States v. Narciso, 446 F. Supp. 252, 267 (E.D. Mich. 1977).
- 15) Disclosure and specification of basic facts identifying any statements made by the defendant to third parties, even if they are not government agents, if the third parties are prospective government witnesses, including: (a) the fact of the existence of such a statement; (b) whether a recordation of such a statement exists in any form whatsoever; (c) the name and address of the individual to whom the statement was made; and (d) the date on which and place where the statement was made. United States v. Narciso, 446 F. Supp. 252, 267 (E.D. Mich. 1977).

- 16) Disclosure and specification of the circumstances surrounding the making of any statements by the defendant or through its authorized agents to any individual, including: (a) the name and address of the person to whom the statement was made; (b) the date on which the statement was made; and (c) the place where the statement was made. United States v. Brighton Bldg. & Maintenance Co., 435 F. Supp. 222, 232 (N.D. Ill. 1977).
- 17) Discovery and disclosure of the substance of any oral statement made by the defendant, whether occurring before, during or after arrest, in response to interrogation or questioning by any person then arguably known to the defendant to be a government agent of any kind, including but not limited to prosecutors, law enforcement officers, jailers and confidential informers, or volunteered in any custodial setting, specifically including the substance of the defendant's assertion of his rights at any time and his responses to any Miranda warnings or similar advice given to him concerning his rights. United States v. McElroy, 697 F.2d 459, 464 (2d Cir. 1982).
- 18) The same discovery and disclosure as defined in items 1 through 17 above but pertaining to any statements made or adopted by the defendant or any representatives, agents, servants, co-venturers, co-conspirators or co-enterprisers whose declarations may be deemed party admissions by the defendant as a consequence of Rule 801(d)(2) of the Federal Rules of Evidence or otherwise attributed to the defendant as a consequence of any

doctrine of vicarious responsibility, whether or not the representatives, etc., are prospective government witnesses. United States v. Thevis, 84 F.R.D. 47, 56-57 (N.D. Ga. 1979); United States v. Agnello, 367 F. Supp. 444 (E.D.N.Y. 1973).

- 19) In the lesser alternative, the same discovery and disclosure as defined in items 1 through 17 above but pertaining to any statements made or adopted by the defendant or by any representatives, agents, servants, co-venturers, co-conspirators or co-enterprisers whose declarations may be deemed party admissions by the defendant as a consequence of Rule 801(d)(2) of the Federal Rules of Evidence or otherwise attributed to the defendant as a consequence of any doctrine of vicarious responsibility, if the representatives, etc., are not government witnesses. United States v. Madeoy, 652 F. Supp. 371, 375 (D.D.C. 1987); United States v. Konefal, 566 F. Supp. 698, 705-07 (N.D.N.Y. 1983); United States v. Fine, 413 F. Supp. 740, 742-43 (W.D. Wis. 1976); see United States v. Murgas, 967 F. Supp. 695, 713-716 (N.D.N.Y. 1997).

Conclusion

It is respectfully submitted that “discovery of defendant’s statements within the Rules must not be restricted in niggardly fashion.” United States v. Johnson, 525 F.2d 999, 1005 (2d Cir. 1975). For all of the foregoing reasons, defendant respectfully moves the court to compel disclosure and production for inspection and copying any and all oral, written or recorded statements or transcripts of any nature or description, made by or

attributed to the defendant, which are in the possession, custody or control of the United States of America, and the existence of which is known or by the exercise of due diligence may become known to it, all as more fully set forth above and as required by Fed.R.Crim.P. 16(a).

**WESSEL & ASSOCIATES
A LAW CORPORATION**

/s/ William F. Wessel
WILLIAM F. WESSEL (#8551)
127 Camp St.
New Orleans, LA 70130
Telephone (504) 568-1112
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and

/s/ Charles F. Griffin
CHARLES GRIFFIN, ESQ.
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**ATTORNEYS FOR
DEFENDANT
JAMES PERDIGAO**

CERTIFICATE OF SERVICE

I hereby certify that on **September 26, 2008** I electronically filed the above and foregoing pleading with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to counsel registered with the court for receipt of pleadings by e-mail. I also certify that the foregoing and all attachments thereto have been served on all counsel of record by facsimile, electronic mail and/or by depositing same in the

United States Mail, properly addressed and postage prepaid, this 26th day of September, 2008.

/s/ William F. Wessel
WILLIAM F. WESSEL (8551)

ROSCH & ROSS

ATTORNEYS AT LAW

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

2100 J.P. MORGAN CHASE BUILDING

712 MAIN STREET

HOUSTON, TEXAS 77002

WILLIAM G. ROSCH III
PARTNER
E-MAIL: rosch@rosch-ross.com

TELEPHONE
713.222.2595

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713.222.0906

July 30, 2007

James R. Mann, Esq.
Assistant United States Attorney
Hale Boggs Federal Building
500 Poydras Street, 2nd Floor
New Orleans, Louisiana 70130

**Re: No. 2:07-CR-103; *United States of America v. James G. Perdigo*; In the
United States District Court for the Eastern District of Louisiana**

Dear Mr. Mann:



I have now had an opportunity to look at the documents you produced and find no production of statements by Mr. Perdigo.

Accordingly, pursuant to Federal Rule of Criminal Procedure 16(a)(1)(A) and 16(a)(1)(B), this letter is to request disclosure of any and all oral, written or recorded statements made by James G. Perdigo to the United States government, to include all agencies and departments, in connection with the above referenced matter.

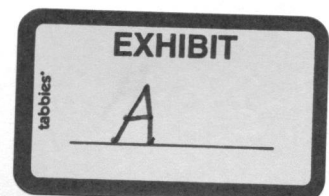
If you have any questions, please do not hesitate to contact me immediately.

Cordially,



William G. Rosch, III

WGR/jls
07:1:1039





U.S. Department of Justice

Eastern District of Louisiana
U. S. Attorney's Office

James R. Mann
Assistant United States Attorney
Chief, Financial Crimes Unit

Hale Boggs Federal Building
500 Poydras Street, Second Floor
New Orleans, LA 70130

Telephone #: (504) 680-3034
Fax #: (504) (504) 589-2027

July 31, 2007

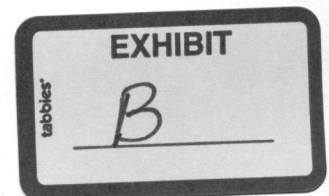
William G. Rosch, III
Rosch & Ross
Attorneys at Law
2100 JP Morgan Chase Building
712 Main Street
Houston, Texas 77002

Re: United States v. James Perdigao
Criminal Docket No. 07-103 "L" (5)

Dear Mr. Rosch:

This letter will reference the Government's response to your letter dated July 30, 2007 wherein you requested Rule 16 Discovery related to statements made by the defendant, Perdigao. Accordingly, the Government attaches the enclosed statements documented by FBI 302s:

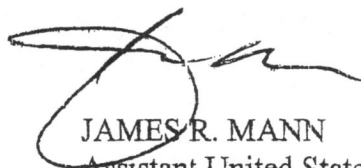
1. 10/15/2004 - Perdigao vehicle search
2. 10/15/2004 - Perdigao interview
3. 10/16/2004 - Perdigao consent search of his residence with attachment
4. 10/19/2004 - Perdigao interview
5. 11/30/2004 - Perdigao interview
6. 12/08/2004 - Perdigao interview
7. 01/18/2005 - Perdigao interview
8. 07/28/2005 - Perdigao interview
9. 03/10/2006 - Perdigao interview
10. 07/06/2006 - Perdigao interview
11. 07/19/2006 - Perdigao interview



Please contact me if you have any questions concerning these disclosures.

Sincerely,

JIM LETTEN
UNITED STATES ATTORNEY

A handwritten signature in black ink, appearing to read 'JRM', with a large, stylized flourish that loops back under the name.

JAMES R. MANN
Assistant United States Attorney
Chief, Financial Crimes Unit

JRM:st
Enclosures

WESSEL & ASSOCIATES
A LAW CORPORATION

127 CAMP STREET ~ NEW ORLEANS, LA 70130-2507
TELEPHONE: (504) 568-1112 ~ FAX: (504) 568-1208 ~ EMAIL: WESSEL27@BELLSOUTH.NET

WILLIAM F. WESSEL

Of Counsel:
VICTORIA LENNOX BARTELS

May 1, 2008

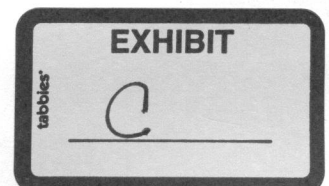
Via Fax Only (504) 589-2027
Original by U.S. Mail
James R. Mann, AUSA
U.S. Attorney's Office
Hale Boggs Building
500 Poydras Street, Suite B-210
New Orleans, LA 70130

Re: USA v. Perdigao
USDC No. 07-CR-103 "L"(5)
Rule 16(a) Production – by the Government

Dear Jim:

Although we have not received from previous counsel in this case, William G. Rosch, III, any letter from you enclosing the written or recorded statements made by the defendant, Perdigao, to the government, Mr. Rosch has turned over to my client the following Form 302's:

1. "Investigation on 10/15/2004", 2 pages;
2. "Investigation on 10/15/2004", 5 pages;
3. 10/16/04 receipt for property;
4. "Investigation on 10/19/2004", 6 pages;
5. "Investigation on 11/30/2004", 1 page;
6. "Investigation on 12/8/2004", 2 pages;
7. "Investigation on 1/18/2005", 2 pages;
8. "Investigation on 7/28/2005", 4 pages;
9. "Investigation on 3/10/2006", 2 pages;
10. "Investigation on 7/6/2006", 3 pages; and,
11. "Investigation on 7/19/2006", 1 page.



James R. Mann, AUSA
U.S. Attorney's Office
May 1, 2008

Our client was debriefed on the following dates for which we have not received FD-302's, notes or transcriptions of any nature as to statements made by our client for the following dates:

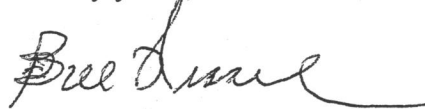
1. October 22, 2004
2. November 9, 2004
3. November 22, 2004
4. January 25, 2005
5. February 28, 2005
6. March 7, 2005
7. April 12, 2005
8. June 28, 2005
9. August 16, 2005
10. August 26, 2005
11. June 16, 2006

It may be that you provided those documents to Mr. Rosch, but he has no cover letter from you in connection with the FD-302's that you did send to him and he has not been able to explain to us that he has received such documents from the above debriefings.

Therefore, could you furnish us the notes of/or statements of our client which were made on the dates outlined herein as part of your Rule 16(a) Production?

Further, on at least one occasion, June 16, 2006, Charlie Griffin and Perdigao observed that the FBI agent took virtually no notes but you took copious notes. If that is so, could you provide your notes?

Sincerely yours,



WILLIAM F. WESSEL

WFW/neh

cc: Charles Griffin, Esq.



U.S. Department of Justice

Eastern District of Louisiana
U. S. Attorney's Office

James R. Mann
Assistant United States Attorney

Hale Boggs Federal Building
500 Poydras Street, Second Floor
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May 9, 2008

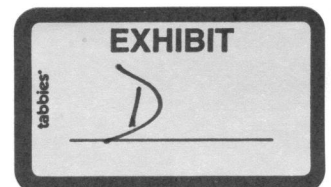
William Wessel
Attorney at Law
127 Camp Street
New Orleans, LA 70130

Re: United States v. James Perdiago
Criminal Docket No. 07-103"L"
Rule 16 Discovery

Dear Mr. Wessel:

In reference to your two letters dated May 1, 2008, the government responds as follows:

1. Pursuant to the documents that you have made available for the government pursuant to Rule 16, we would like to set up a convenient time to inspect and copy those documents. Therefore, please indicate convenient times available so that our representatives may accomplish this task.
2. I am enclosing a cover letter that I sent to William Rosch dated July 31, 2007 regarding the government's production on the FBI 302s at that time.
3. You have indicated that your client was debriefed on other dates which no FBI 302s were provided. The government is now attempting to identify the accuracy of those dates and whether or not such interviews occurred and if so, FBI 302s will be provided.
4. You have advised that an interview was conducted with the defendant on June 16, 2006 and have requested my notes. The government advises that you are not entitled to attorney's notes as they are work product and will not be provided.




Please advise by letter dates available for the government's inspection of your reciprocal Rule 16 discovery.

Sincerely,

JIM LETTEN
UNITED STATES ATTORNEY



JAMES R. MANN
Assistant United States Attorney



SALVADOR PERRICONE
Assistant United States Attorney

JRM:st
Enclosure
cc: Charles Griffin, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CRIMINAL NO. 07-103

VERSUS

SECTION "L" MAG. (5)

JAMES G. PERDIGAO

VIOLATION: 18 USC 1341,
1344, 2314, 1957 & 2, 26
USC 7201 & 7206 (1)

**CERTIFICATE OF COUNSEL
PURSUANT TO LOCAL RULE 12**

Undersigned counsel for defendant James Perdigao hereby certifies that they have conferred with counsel for the government for the purpose of amicably resolving the issues but are unable to agree on the issues raised by defendant's motion to compel disclosure of defendant's statements pursuant to Fed.R.Crim.P. 16(a).

**WESSEL & ASSOCIATES
A LAW CORPORATION**

/s/ William F. Wessel
WILLIAM F. WESSEL (#8551)
127 Camp St.
New Orleans, LA 70130
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and

/s/ Charles F. Griffin
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CERTIFICATE OF SERVICE

I hereby certify that on **September 26, 2008** I electronically filed the above and foregoing pleading with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to counsel registered with the court for receipt of pleadings by e-mail. I also certify that the foregoing and all attachments thereto have been served on all counsel of record by facsimile, electronic mail and/or by depositing same in the United States Mail, properly addressed and postage prepaid, this 26th day of September, 2008.

/s/ William F. Wessel
WILLIAM F. WESSEL (8551)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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JAMES G. PERDIGAO

VIOLATION: 18 USC 1341,
1344, 2314, 1957 & 2, 26
USC 7201 & 7206 (1)

NOTICE OF HEARING

To: James R. Mann, AUSA
U.S. Attorney's Office
Hale Boggs Building
500 Poydras Street, Suite B-210
New Orleans, LA 70130

PLEASE TAKE NOTICE that the Motion to Compel Disclosure Of Defendant's Statements Pursuant To Rule 16(A) filed by defendant, James Perdigo, through undersigned counsel, will be brought for hearing before the Honorable Alma L. Chasez, United States Magistrate Judge, 500 Poydras Street, New Orleans, Louisiana 70130 at 12:00 p.m. on October 29, 2008, or at such other date and time as may be set by the court.

**WESSEL & ASSOCIATES
A LAW CORPORATION**

/s/ William F. Wessel
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/s/ William F. Wessel
WILLIAM F. WESSEL (8551)